ABDUL KARIM USENSA, O

v.

LING MAN

HIGH COURT MALAYA, KUANTAN
ABDUL RAZAK J
[CIVIL SUIT NO. 109 OF 1980]
4 MARCH 1981

LANDLORD AND TENANT: *Tenancy - Subject to Control of Rent Act 1966 - Eviction proceedings against chief-tenant not a party - Section 17(1)(b) - Consent order to evict chief-tenant and all those under him - Vacant possession handed to landlord by bailiff - Sub-tenant applied to set aside consent order - Application allowed - Sub-tenant ordered to be made party - Landlord appealed against decision - Notice of discontinuance filed by landlord - Application by sub-tenant for landlord to deliver vacant possession - Struck off for default of appearance - Application for reinstatement struck off - Sub-tenant filed action against landlord in High Court for repossession - Application under O. 14 Rules of the High Court 1980 - Whether application barred by res judicata.*

This was an application by plaintiff/applicant, the sub-tenant under O. 14 to enter final judgment against the defendant/respondent, the landlord for possession of the premises 17, Jalan Besar, Mentakab, Pahang and damages.

The respondent was the registered owner of the premises and landlord of one R. Gopal, the Chief-tenant. The premises were subject to the Control of Rent Act 1966. In 1973, the respondent filed a summons against the said Gopal for repossession and obtained a consent judgment against the said Gopal and all those under him to deliver vacant possession on or before 7 September 1975. Eventually all were evicted by the bailiff. Nevertheless, on an application by the applicant, the said consent judgment was set aside by the President of the Sessions Court who ordered the respondent to add the applicant as a party to the action. The respondent's appeal to the High Court against this decision was dismissed. Subsequently, the respondent filed notice of discontinuance of the action. The applicant thereby filed an application at the Sessions Court for the respondent to deliver up vacant possession but the application was however struck off for default of appearance and the application to reinstate the action was also struck off. The applicant then filed an action against the respondent, for repossession and then proceeded to obtain final judgment under O. 14.

The respondent argued that the suit and the O. 14 application were barred by *res judicata* since his application to repossess the premises and his application for reinstatement had both been dismissed.

Considering all the circumstances of the case, the question to be determined was whether there was a triable issue for a trial.

Held:

[1] For *res judicata* to apply there must be an allegation that the whole legal rights and obligations of the parties were concluded by the earlier judgment which may have involved determination of questions of law and fact.

[2] As the applicant was not made a party to the action filed by the respondent against the Chief-tenant, this contravened one of the conditions under the Act, therefore the tenancy was not rightly terminated.

[3] It was evidently clear that the question of whether the applicant had a right to repossess had never been tried. Indeed, the respondent in discontinuing the action had clearly resolved to prevent the Court from trying the issue.

[4] As the respondent had not denied to the statements of the applicant by filing affidavit in reply, it must necessarily be concluded that those statements of facts were accepted by the respondent to be true.

[5] In the circumstances, there was no triable issue for the case to go to trial.

[Judgment for the plaintiff/applicant allowed.]

Legislation referred to:
Control of Rent Act 1966, s. 17(1)(b)
Rules of the High Court 1980, O. 14

For the applicant/plaintiff - Joginder Singh
For the respondent/defendant - S.M. Appaduray

(Digest Form Only)

Also found at [1981] CLJ 135